

IN THE HIGH COURT OF HIMACHAL PRADESH
AT SHIMLA

CWP NO. 449 OF 2005

Reserved on : 7th May, 2007.
Date of Decision: 17th May, 2007

H.P.S.E.B and another	Petitioners
Versus	
Sushil Chander Sharma	Respondent

Coram

The Hon'ble Mr. Justice **Sanjay Karol, J.**

Whether approved for reporting¹? Yes

For the petitioners: Mr.Shrawan Dogra, Advocate..

For the respondent: Mr.Ramakant Sharma, Advocate

Sanjay Karol, J.

Shri Sushil Chander Sharma, employee was engaged as daily waged Beldar by the petitioners during the year 1986 and worked upto 24th September, 1988, in certain spells for which muster roll was issued. On a dispute raised by workman reference under Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) was made by the Government to the H.P. Industrial Tribunal cum Labour Court, Dharamshala (for short, Tribunal) as under:-

"Whether the termination of services of Sh. Susheel Chander Sharma S/o late Sh. Jeet Ram Sharma by the Executive Engineer, HPSEB Division, Gagret, Distt. Una, H.P. w.e.f.

24.9.1998 without complying the provisions of Industrial Disputes Act, 1947 and certified standing orders is legal and justified? If not, what relief of service benefits the above workman is entitled to?"

Respondent preferred a Claim Petition before the said Tribunal, which was registered as Reference No. 238/2002 (RBT no.183/04) Sushil Chander Sharma vs. Executive Engineer, inter alia, contending that his services were illegally terminated after 24th September, 1988, without compliance of the provisions of the Act and also in violation of H.P.S.E.B. Industrial Establishment Standing Orders framed by virtue of Industrial Employment (Standing Orders) Act, 1946 (hereinafter referred to Standing Orders Act).

In response, petitioners filed reply inter alia stating that applicant left the job of his own. Therefore, there is no infraction of any provisions of the Act or Standing Orders Act. The plea of limitation by way of preliminary objection i.e. the claim being barred due to delay and laches was also taken.

The Tribunal answered said Reference by holding that the services of the respondent were terminated by the petitioners in violation of provisions of Standing Orders and as such his disengagement is legally fallible. The issue of delay and laches, on merits was held not to be stale. The plea with regard to abandonment of the job was also

negatived in view of the fact that respondent had promptly raised the industrial dispute. The direction was given to the petitioners to reengage the respondent-employee in the same capacity in which he was rendering work prior to his disengagement and also at the same place or in close vicinity. The Tribunal further held the respondent is entitled for back wages to the extent of 25% with all other consequential benefits.

Mr.Shrawan Dogra, learned counsel for the petitioner-Board argued that (i) learned Judge could not have travelled beyond the scope of Reference inasmuch as the Reference was only limited to infraction of provisions of the Act and not the Standing Orders Act (ii) the Tribunal has no jurisdiction to expand the scope of Reference and answer the same, and (iii) the provisions of the Standing Orders Act stood exempted with effect from 22.8.1992, therefore, reliance thereupon is bad in law.

I have heard the learned counsel appearing for the respondent-employee.

I proceed to decide as under:-

The Standing Orders Act has been enacted with the object of defining with sufficient precision

the conditions of employment and also to make the said conditions known to the workmen employed with the industrial establishment. The Act provides model Standing Orders. However, each of the industrial establishments can have their own Standing Orders, in conformity with the provisions of the Standing Orders Act to be duly certified by the certifying officer. Section 14 empowers the Government, by Notification to be published in the official gazette, to exempt conditionally or unconditionally, any industrial establishment from all or any of the provisions of the Standing Orders Act.

Notification exempting the petitioner-Board from the applicability from all the provisions of the Act is reproduced:-

"EXEMPTION FROM THE PROVISIONS OF THE ACT
(Issued and published in Hindi in RHP dated 22.8.92 p. 1180)
Shimla 2, the 11th September, 1985.

No.12-5/85-Shram.- In exercise of the powers conferred by him under section 14 of the Industrial Employment (Standing Orders) Act, 1946 (Act No. XX 1946), the Governor, Himachal Pradesh is pleased to exempt the establishment of Himachal Pradesh State Electricity Board from all the provisions of the said Act."

Perusal of the reference itself would show that the termination of the respondent without complying with the provisions of the Standing Orders Act is also part of the reference. Therefore, the

condition that it is beyond the scope of reference is not acceptable.

Admittedly, aforesaid notification issued under the Standing Orders Act, exempting the applicability of the provisions, was not published prior to the termination of the respondent. Therefore, I see no reason to interfere with the Award. The provisions of the Standing Orders Act has not been complied with inasmuch as no notice in compliance thereof has been issued. The plea of the petitioners that the respondent has abandoned the services has also been rightly rejected.

With regard to the plea of delay and laches this Court in Divisional Manager, HPFC and another vs. Garibu Ram CWP No. 1542 of 2002) decided on 17th April, 2007, held that each case has to be seen in the respective facts and circumstances. In the present case, respondent undisputably has been pursuing his remedies. In fact, this plea has not been seriously pressed by Mr. Dogra also. During the course of hearing, learned counsel for the respondent gave an undertaking on behalf of the respondent-employee to the effect that his client shall not claim any back wages in terms of the award dated 2nd March, 2005. He further stated that continuity in service and seniority be reckoned from the date of reference.

Accordingly, the award dated 2nd March, 2005 passed in Reference No. 238/2002 (RBT No.183/04) is modified to the extent that even though respondent/employee would be entitled for reinstatement, however, his continuity in service and seniority shall be reckoned from the date of Reference and he shall not be entitled for any back wages. He shall be entitled for his wages/ salary from the date of his joining.

The respondent apprehends that the petitioners may not allow him to join. Consequently, the petitioners are directed to allow the respondent to join the services within a period of one month from today at the same place where he was working at the time of his disengagement or in the nearby vicinity. The petitioners are directed to intimate the date and place of joining to the respondent on the address mentioned in the memo of parties of the writ petition as also through his counsel.

With the above observations and directions, the writ petition is disposed of. CMP No.957 of 2007 is also disposed of.

Records of the cases, if any, be sent back immediately and forthwith.

May 17, 2007
(C)

(Sanjay Karol),
Judge

